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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re E.G. et al., Persons
Coming Under the Juvenile
Court Law.

B290947
(Los Angeles County
Super. Ct. Nos.
18CCJP01676A,
18CCJP01676B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Philip L. Soto, Judge. Appeal dismissed.

Lisa A. Raneri, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, appellant D.B. (mother) challenges the juvenile court's jurisdictional findings that she failed to protect her two children—her daughter E.G. (daughter) and her son R.L. (son)—from sexual abuse by son's father and mother's former boyfriend, M.L. Although mother does not challenge the jurisdictional findings based on M.L.'s sexual abuse of daughter, mother contends substantial evidence does not support the jurisdictional findings as to her. Respondent the Los Angeles County Department of Children and Family Services (Department) argues not only that substantial evidence supports the findings as to mother, but also that her appeal does not raise a justiciable issue. While the appeal was pending, the juvenile court terminated its jurisdiction over the children.

As discussed below, we conclude that even if we agreed with mother, we can provide no effective relief. As a result, we dismiss her appeal.

BACKGROUND

1. Sexual abuse of daughter and its aftermath

When daughter was eight years old, mother and M.L. were in a romantic relationship. M.L. often cared for both son and daughter when mother was out of the house at work. On multiple separate occasions when mother was at work, M.L. sexually abused daughter in the family home. Son was

approximately one year old at the time and was present when the sexual abuse occurred.

Daughter did not disclose the sexual abuse to anyone for a year or more. In late 2011 or early 2012, when daughter was 11 years old, she told mother about the sexual abuse. Upon learning of the abuse, mother separated from M.L. and did not allow him into her home. Mother sought counseling for daughter and kept daughter away from M.L. However, after keeping M.L. and son apart for a while, mother eventually allowed M.L. to visit son every other weekend at M.L.'s home. And for a time, mother resumed her relationship with M.L., which upset daughter. Mother never left daughter alone with M.L. but they did go on family outings together and sometimes M.L. spent the night at mother's home when daughter was also home. Mother asked daughter to "forgive and forget" the abuse and, at one point, even blamed daughter for the abuse. But mother later apologized for blaming daughter.

Even after mother's own relationship with M.L. ended, she allowed M.L. to have regular unmonitored visits with son. Mother did not believe M.L. would abuse his own son. And she noted that none of the early investigations into M.L.'s conduct (discussed below) resulted in any concerns for son, and no one had advised her to keep son separated from M.L. Although daughter was concerned M.L. might sexually abuse son, son never expressed any problems with, or abuse from, M.L. Son said he felt safe with M.L. M.L. did not make himself available during investigations, and he never took responsibility or sought treatment for his conduct.

As a result of the sexual abuse she experienced, as well as mother's and son's continuing relationships with M.L., daughter's

mental health suffered. Although she engaged in therapy, she was depressed and suicidal, and had dropped out of school for a significant amount of time without mother's knowledge.

2. Earlier Referrals and Investigations

In July 2012, when daughter was 12 years old, the Department received its first referral related to M.L.'s sexual abuse of daughter years earlier. After investigation, the Department closed the referral, finding the sexual abuse allegations as to daughter "inconclusive" and the at-risk allegations as to son "unfounded." A Department social worker advised mother to take additional protective steps and to file for child custody. Mother indicated she would do so.

Also in July 2012, mother reported M.L.'s conduct to the Long Beach Police Department. The police ultimately closed the case because mother and daughter decided not to pursue criminal charges.

Five years later, in October 2017, when daughter was 17 years old, the Department received two additional referrals related to M.L.'s sexual abuse of daughter. Because the Department had investigated the same allegations in 2012, the Department "evaluated out" both 2017 referrals.

3. Current Referral, Investigation, and Dependency Proceedings

On February 1, 2018, the Department received yet another referral regarding M.L.'s sexual abuse of daughter when she was eight years old. At the time of the 2018 referral, both children lived with mother, and there were no known family law court orders. Daughter was 17 years old and son was almost 11 years old.

On March 14, 2018, after investigating the most recent referral, the Department filed a six-count petition under Welfare and Institutions Code section 300, subdivisions (b), (c), (d), and (j)¹ on behalf of the children. The petition alleged M.L. sexually abused daughter when she was eight years old and, after mother learned of the sexual abuse, mother continued to allow M.L. unlimited access to son and allowed M.L. access to their home. The petition alleged mother emotionally abused daughter, failed to protect both children, and placed both children at risk of serious harm.²

At the detention hearing held the following day, the juvenile court ordered both children detained from their fathers and placed with mother under Department supervision. The juvenile court also prohibited contact between M.L. and daughter but granted M.L. monitored visits with son.

A combined adjudication and disposition hearing was held over two days in June 2018. In its jurisdiction and disposition report, the Department stated it believed “the children are safe with mother only. Mother has acknowledged that she might have failed to take appropriate action in the past to fully protect her children from [M.L.] She expresses regret and takes some responsibility. . . . It would be detrimental to both of these children to remove them from mother’s care.” The Department recommended sustaining the petition with a few minor edits,

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Two of the six counts in the petition concerned daughter’s father, J.G., neither of which are at issue here.

placing both children with mother under Department supervision, and ordering services for mother.

Daughter testified on the first day of the hearing, and mother testified on the second day. Their testimony was substantively consistent with the facts outlined above.

The juvenile court dismissed all but the subdivision (d) count of the petition. The court modified the subdivision (d) count slightly, sustained it as modified, and declared both children dependents of the court. The court found a preponderance of the evidence supported the sustained count, which stated: “On numerous prior occasions, the children, [daughter and son]’s mother, [D.B.]’s male companion, [M.L.], sexually abused [daughter], when the child was 8 years old, by removing the child’s clothing and laid on top of the child simulating sexual intercourse. On numerous prior occasions, [M.L.] fondled the child’s vagina. On numerous prior occasions, [M.L.] fondled and kissed the child’s breasts. On numerous prior occasions, [M.L.] showered with the child and rubbed [his] penis against the child’s vagina and buttocks and washed the child’s body and rubbed cream throughout the child’s body. On numerous prior occasions, [M.L.] forced the child to masturbate [M.L.]’s penis to the point of ejaculation. On a prior occasion, the child disclosed the sexual abuse of the child by [M.L.] to the mother. The mother knew of the sexual abuse of the child by [M.L.] and failed to protect the child and the child’s sibling [son]. The mother continued to allow [M.L.] to frequent the children’s home and to have unlimited access to [son]. Such sexual abuse of [daughter] by [M.L.] and mother’s failure to protect the child endangers the child’s physical health, safety and well-being, creates a detrimental home environment and places the child and

the child's sibling, [son], at risk of serious physical harm, damage, danger, sexual abuse and failure to protect."

The juvenile court noted that while the dismissed counts required a finding of current risk to the children, the subdivision (d) count did not. The court stated, "We don't need a current risk. All we need to do is believe that these things happened and that [son] could be harmed. And these cases say that even though [son] is a boy and the harm came to [daughter], the court may nevertheless find the (d) to be true." With respect to the dismissed subdivision (b) count against mother, the court stated, "I agree with the mother's counsel. Mother did everything to protect and is doing everything to protect [daughter]." The juvenile court also explained, "Because [the Department] didn't take appropriate steps in 2012 [when the sexual abuse was first reported] doesn't mean that appropriate steps can't be taken later."

Noting the burden applicable to a jurisdictional finding differs from that applicable to a removal finding, the juvenile court held the Department had not shown by clear and convincing evidence that son should be removed from his father, M.L. "Remember, there is a difference: I only need proof by a preponderance of evidence to find [son] at a substantial risk. It's incumbent upon the [Department] to produce proof by clear and convincing evidence that he should be removed from [M.L.] It does not follow, necessarily, that because I find [jurisdiction under subdivision] (d), I have to remove [son]. It's a very stale complaint. [Son] has never complained to his mother or anybody else that his father molested him in any fashion."

The court ordered daughter placed with mother and, over objections from both the Department and son's counsel, ordered

son placed with mother and M.L., with mother having primary physical custody of son under Department supervision. Also over objections from the Department and son's counsel, the court ordered unmonitored overnight visits for M.L. with son.

4. Appeal and Subsequent Termination of Dependency Jurisdiction

Mother appealed the court's jurisdictional findings as to her. While mother's appeal was pending, the juvenile court terminated jurisdiction over both children. The court ordered daughter and son released to mother. The court ordered joint legal and physical custody of son to mother and M.L., with son's primary residence being with mother.

DISCUSSION

The Department argues mother's appeal is moot both because regardless of our decision here dependency jurisdiction existed based on M.L.'s conduct and because while this appeal was pending the juvenile court terminated jurisdiction and placed the children with mother. Mother asks us to exercise our discretion to determine her appeal. We agree with the Department and, therefore, dismiss mother's appeal.

It is not uncommon for a dependency appeal to be rendered moot when, while the appeal is pending, the juvenile court terminates its jurisdiction. Although "dismissal for mootness in such circumstances is not automatic" and "'must be decided on a case-by-case basis,'" "[a]s a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot." (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) "[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error."

(*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) “As a general rule, it is a court’s duty to decide ‘ “ ‘actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’ ” ’ [Citation.] An appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief. [Citation.] Still, a court may exercise its inherent discretion to resolve an issue when there remain ‘material questions for the court’s determination’ [citation], where a ‘pending case poses an issue of broad public interest that is likely to recur’ [citation], or where ‘there is a likelihood of recurrence of the controversy between the same parties or others.’ ” (*Id.* at pp. 58–59.)

Here, the juvenile court not only terminated its jurisdiction, but in doing so it ordered the children placed with mother. In effect, the court ordered custody returned to the way it was before these proceedings began. As in *In re N.S.*, *supra*, 245 Cal.App.4th 53, where the court dismissed the appeal following the juvenile court’s termination of jurisdiction, “the dismissal order here was *favorable* to Mother and does not form the basis of any adverse custody ruling.” (*Id.* at p. 61.) Thus, even if we were to consider mother’s appeal and determine the juvenile court erred, “there remains no effective relief we could give Mother beyond that which she has already obtained.” (*Id.* at p. 62.)

Despite our inability to provide effective relief, mother urges us to exercise our discretion to address her appeal. Citing *In re M.W.* (2015) 238 Cal.App.4th 1444, mother states the jurisdictional findings against her “carry a ‘particular stigma’ ”

and are “pernicious.” However, unlike *In re M.W.*, where the underlying dependency proceedings remained pending during the appeal, the juvenile court here has terminated jurisdiction. Thus, the jurisdictional findings at issue here can no longer affect these proceedings because they have concluded. Similarly, this is not a case where the juvenile court’s exit orders continue adversely to affect the parent. (E.g., *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [“The fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant. If the jurisdictional basis for orders restricting appellant’s visitation with, and custody of, [appellant’s child] is found by direct appeal to be faulty, the orders would be invalid”].) Rather, as noted above, the juvenile court’s exit orders here placed both children with mother and in effect returned custody to its predependency proceedings status.

Finally, mother also argues an “implied affirmance” of the juvenile court’s jurisdictional findings “would be prejudicial to her in any subsequent dependency proceedings regarding [her son]” and “would infect any potential subsequent dependency proceedings regarding [her son].” Although sometimes courts exercise their discretion and consider an appeal out of “‘an abundance of caution’ ” (*In re C.V.* (2017) 15 Cal.App.5th 566, 571), we conclude the circumstances presented here do not warrant our review. Mother’s claims of prejudice are speculative. Even if for example a future dependency proceeding were initiated regarding son, it is unclear how the instant case would adversely affect mother in such a future case. Presumably, if the instant proceedings were discussed in a hypothetical future case,

mother would not limit the discussion to the finding that she failed to protect her children. Instead, it is reasonable to believe mother would bring to the future court's attention her objections to the findings against her in these proceedings as well as the fact that throughout these proceedings both her children remained in her care and in the end were placed with her. "Those facts would almost certainly be available in any future dependency proceedings." (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 63.) Mother has failed to identify a specific adverse consequence she would suffer as a result of the challenged jurisdictional findings. "We see no reason to review the juvenile court's jurisdictional findings here on the basis of such speculation or caution." (*Id.* at p. 62; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1494–1495.)

DISPOSITION

Mother's appeal is dismissed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.